

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0731P
Gross and Adjusted Gross Income Tax
Fiscal Years Ending 03/31/93, 03/31/94, 03/31/95, and 03/31/96

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is incorporated in Delaware and has neither Indiana business locations nor property. Taxpayer is engaged in the business of importing and wholesales distribution of electronic equipment. Its Indiana employees are known as product specialists and are engaged in the solicitation of sales, product training of dealers, setting up and managing displays, working at dealers' locations during special promotions, and resolving dealer problems which establishes nexus for gross income tax. Taxpayer had a prior audit completed on September 14, 1995 containing the same issue as the current audit.

Taxpayer protests the penalty and states it had already filed the March 1994 return before the audit was performed and that all returns since March 1994 have included the gross income tax calculation. In addition it did not include the gross income tax calculation on the 1994 return due to a flaw in Software.

A review of the prior audit indicates the taxpayer paid gross income tax in 1992 but failed to pay in 1993 and was assessed a negligence penalty because it had failed to make corrections after being audited twice previously. The current audit is the taxpayer's fourth and taxpayer failed to pay gross income tax in 1994.

I. **Tax Administration** –Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty for failure to include wholesale sales subject to gross income tax. Taxpayer states there was a flaw in the software therefore the return was prepared erroneously. In the prior audit the taxpayer also protested the penalty based upon a software flaw. Taxpayer should have reviewed the returns for accuracy. The 1994 return as filed generated a refund in excess of \$34,000 as a result of the failure to compute gross income tax. Reasons for the refund should have been examined by the taxpayer. Likewise the tax return contains proper spaces for the computation of gross income tax. The issue was in prior audits and the taxpayer's tax department should properly have filed the returns.

The department finds that a negligence penalty is proper.

FINDING

Taxpayer's protest is denied.